

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

B-218632

DATE:

August 8, 1985

MATTER OF:

Leslie Company

DIGEST:

1. Where protest against solicitation seeking to restrict competition was dismissed, subsequent protest on the same bases after award under the solicitation is dismissed.
2. Unsupported allegations of favoritism do not satisfy the protester's burden of proof. GAO will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition.

Leslie Company (Leslie) protests the award of contract No. N00189-85-D-0088 for the overhaul of Leslie valves to Valcon Sales and Services, Inc. (Valcon), by the Naval Supply Center (Navy), Norfolk, Virginia. Leslie contends that Valcon is legally and technically incapable of performing the contract, that the solicitation and its amendments are defective and that the contracting officer has exhibited favoritism to Valcon.

We dismiss the protest in part and deny the remainder.

A protest previously filed on behalf of Leslie when this solicitation was originally issued alleged that no offeror other than Leslie could perform the required valve overhaul in accordance with the solicitation specifications. We dismissed this protest by decisions, Marker-Modell Associates, B-215049, May 25, 1984, 84-1 C.P.D. ¶ 576, affirmed, Marker-Modell Associates--Request for Reconsideration, B-215049.2 July 26, 1984, 84-2 C.P.D. ¶ 117, in which we held that in view of the objective of our bid protest function to insure full and free competition for government contracts, our Office will not consider a protest that an agency should procure services from a particular firm on a sole-source basis. We found this to be so even though the protester claimed that its proprietary position made it the only firm qualified to do the work.

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The Navy received best and final offers on the competitive solicitation on July 23, 1984. After reviewing Valcon's proposal and its responsibility, award of a firm, fixed-price contract was made to Valcon on December 20, 1984. Leslie timely protested the award to the Navy, which denied the protest in May 1985. Leslie then protested the award to our Office.

Leslie first contends that Valcon is incapable of meeting the overhaul requirements of the contract because only Leslie has access to the original equipment manufacturer's drawings and specifications. Leslie asserts that its protest is not that it objects to opening requirements for the overhaul of Leslie valves to competition; rather, Leslie states that under the contract requirements as written, Valcon cannot perform.

Notwithstanding Leslie's position to the contrary, Leslie's basic point is that only Leslie, the original equipment manufacturer, can overhaul Leslie valves satisfactorily because only it has the necessary proprietary data including drawings and specifications. These are the same allegations that we considered and dismissed in Marker-Modell Associates, B-215049, supra. As indicated in that decision, since the basic thrust of Leslie's argument is to restrict competition to itself, we dismiss this aspect of the protest. Baird Corporation, B-206268, July 6, 1982, 82-2 C.P.D. ¶ 17.

Leslie also contends that amendments 003 and 004 to the solicitation place Leslie at a competitive disadvantage as they allow Valcon to perform the overhaul work under less stringent requirements than would have been required of Leslie. The Navy argues that this basis of protest is untimely.

Again, amendments 003 and 004 were specifically protested and considered in our previous decision dismissing the protest. In Marker-Modell Associates--Request for Reconsideration, B-215049.2, supra, we made it clear that the assertion that the request for proposals (RFP) provisions were discriminatory to Leslie was considered when we initially dismissed Marker-Modell's protest. Moreover, we held that the protester's request for reconsideration on the issue was untimely. Therefore, Leslie's current protest on this point is dismissed.

Leslie's third contention is that there was a material change in the inspection and acceptance requirements upon award to Valcon to provide for inspection at destination rather than origin. Leslie alleges that it was not offered the right to modify its proposal in response to the change. The Navy asserts that this was an administrative change of the inspecting agency from the Defense Contract Administration Services Region to its supervisor of shipbuilding. The Navy indicates that in doing this, it made an error in designating destination inspection. When apprised of the error, the Navy states that it modified the contract to provide that inspection and acceptance be accomplished at the contractor's plant. Both the Navy and Valcon indicate that origin inspection was always contemplated. The protester has not demonstrated that the Navy's explanation is erroneous. Therefore, this protest basis is denied.

Leslie's fourth basis of protest is that the ambiguities and lack of criteria in the amended RFP make it impossible for offerors to structure meaningful offers and for the government to evaluate them. Under our Bid Protest Regulations, however, protests dealing with defective specifications must be filed at our Office prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1985). Since Leslie's protest was not filed until May 17, 1985, almost 1 year after the closing date for receipt of proposals on May 23, 1984, this basis of protest is untimely. Nor do we think that this issue warrants our consideration under 4 C.F.R. § 21.2(c) as a significant issue, as Leslie requests.

Finally, Leslie alleges that the overall conduct of this procurement shows favoritism toward Valcon by the contracting officer. Leslie's basis for this charge is that the above alleged improprieties in the award to Valcon would not have occurred absent agency bias.

In our view, however, the Navy's actions in this procurement merely show an effort to avoid the past practice of costly sole-source contracts and to provide for competitive procurements. The protester has the burden of affirmatively proving its case; unsupported allegations do not satisfy the protester's burden of proof. J. L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 C.P.D. ¶ 99. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Lightning Location and Protection, Inc., B-215480, Feb. 21, 1985, 85-1 C.P.D. ¶ 216. Since we find nothing in this case which shows bias against Leslie, this protest basis is denied.

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B-218632

The protest is dismissed in part and the remainder denied.

for *Lyndon E. Van*
Harry R. Van Cleve
General Counsel